

# Japanese Compliance — Law and Labor Law

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## **The Views of Compliance Appear**

The Japan Business Federation (Nippon Keidanren) revised the corporate activities charter on 15, October, 2002 and declared compliance. Fairly many companies expressly declared compliance in their regulations. It was a surprise to me.

Compliance was a common sense. Its express provision was needless, despite Nippon Keidanren and many companies declared compliance.

Why did they declare such matter of common knowledge? That's because the financial and political violations of laws have continued and for that cause the financiers or the politicians lost the trust of customers or citizens.

In the period of Japan economic revival after the Second World War the workers worked for rapid economic development and shared profits under the lifetime employment system and seniority rule, and they were regardless of the customers or the citizens. In this period, that is, during the forty-five years following the war's end they worked regardless of the violation of laws.

**(Compliance before 1900)** In this period Japan's employers should give their employees the annual vacations with pay by the criminal punishment of the Labor Standards Law (article 39, 119). But for instance the public school teachers did not take the annual vacations with pay which were by law protected though their union went on the strike which was prohibited by the Local Public Service Law (article 37). According the unions theory the law is against article 28 of the Japan's constitution. Eventually only a small number of the strike leaders were arrested and the employers almost were not blamed by article of Labor Standards

Law. In this period the financial and politician scandals against laws didn't appear openly.

**(Compliance after 1991)** Since 1991, 5 bubble collapse recession gave Japan various and much changes.

First is deregulation. The idea is freedom, fairness, globalization and competition. Koizumi ministry stated in April of 2001 putting up the flag of the structural reform and declared the stated four rules and promoted them. But the weak became the victim of the strong as the result of free competition. The employers decreased the regular workers and employed the part-time workers, the dispatched workers or the free-time workers. Their workers were temporary and their wages and working conditions were very low in comparison with the regular workers. Almost many temporary workers feel unfair (Meiji Law Journal vol.9 p.114, vol.11 p.120).

Secondarily owing to bubble collapse recession many enterprises went bankrupt or escaped Japan to east South Asia, China and Malaysia etc. Many enterprises which survived, decreased personnel and drove their employees hard and death or suicide from overwork continued. Furthermore suicide over 30,000 a year continued six years. The lifetime employment system and especially seniority rule swung. The workers lost loyalty to the employers.

Thirdly, the enterprises violated laws and brought about the accidents which were followed by the citizen's death and injury. A fairly many politicians were arrested on suspicion of violating the Public Offices Election Law or the other laws. The financiers or the politicians lost the trust of citizens.

Fourthly, the enterprises violated laws, lost the trust of the workers and the customers or the citizens and declined or collapsed. Compliance appeared in this period.

**(Law Violations and Compliance's development)** The illegal acts or offences against laws in 2002 appeared in the companies of Snow Brand Food, Mitsui Bussan, Nippon Hamu, Tokyo Denryoku, Nippon Shinpan and Toyota etc.

The managers worked, especially since the bubble in 1991, to raise great profits for their owners, shareholders in proportion to American style.

But in order to survive in the severe competition, the enterprises shall maintain get the trust of the company's employees, the customers, consumers and territorial inhabitants.

Most Japanese learned a lesson from many legal cases. Snow Brand Milk made defective milk and sold them to citizens. The company lost the trust of the workers, the customers or consumers and the territorial inhabitants. The companies, Snow Brand Food and Nippon Shokuhin collapsed.

The presidents of Mitsui Bussan and Tokyo Denryoku were both the vice presidents of Nippon Keidanren, and they both resigned from the vice presidents. In case of Mitsui Bussan though senior officials were arrested on the charge of bribery the president resigned. In case of Tokyo Denryoku a number of senior officials took the unjust actions including the false inspection record of atomic energy etc, and the concerned presidents including successive presidents resigned. Both companies afterwards also illegal actions.

In case of Mitsui Bussan on December, 2004 Tokyo To and three prefectures of Kanagawa, Saitama and Chiba charged the persons in charge of Mitsui Bussan and its subsidiary company for the problem of selling equipment for cleanliness of waste gas under a false performance about regulation of diesel-engine car.

In case of Tokyo Denryoku it pronounced ¥1,441 billion (over age ¥51 ten thousand a worker) for unpaid (service) overtime work in the past two years of prescription (article 115 of the Labor Standards Law) to some 2800. Tokyo Denryoku was ordered by the Labor Standards office at the request of the volunteer in the workplace in accordance with Chubu Denryoku case (Meiji Law Journal vol.11, p.112).

In the case of the criminal scandal a prosecutor investigates and prosecutes a company. The actual offenders were in many cases the senior officials and the senior officials were arrested or further indicated. In the case the president

resigned from a sense of responsibility. By losing the confidence in the consumers the companies declined sometimes collapsed. On the contrary the consumers began to take the stocks in the law-abiding company.

At this time the companies declared compliance. In most companies compliance was limited to laws. But some companies in addition to laws turned their attention to ethics and human rights etc.

Thereafter in 2003 and 2004 the companies' scandals against laws happened in succession and just then besides compliance the word of the Corporate Social Responsibility (CSR) was far and wide reported by newspaper etc.

The views for its meaning differ, but generally CSR includes compliance and social action over compliance. Mr. Adachi states his wide view after examining various views (E. Adachi "On the present situation and subject of CSR in Japan," Horitsu Jiho vol.76 no.12 p.34, 38–39). I desire to state that compliance rather includes CSR.

### **Law-Sociological Method for Compliance**

It is not permissible for the companies to violate laws and especially to commit crime for pursuing profits. The law scholars can not overlook these facts. The legal methods are various.

**(Law Interpretation Method)** The method may save the companies from illegal acts or on the opposite side may take severe attitude against the companies' illegal acts. The method may try to arrange the appraisals and systematize them.

The methods clarify the opinions of the persons concerned and the contents of the cases, and then they are useful and important, but they don't show the clear prospect the future.

**(Law-Sociological Method)** The method inquires into the following process and problems closely.

- (1) Compliance is a common sense. Why now is such compliance necessary?

It is because of the company's illegal acts or offence?

- (2) How was compliance form? Did an employer make autonomously or by a union's request?
- (3) What were the merits and demerits of the compliance since birth. They shall be stated historically.
- (4) The social status of the workers, customers, consumers and inhabitants became for the enterprises to attach importance.
- (5) The Law for the protection of the public benefits reporters was established, but it was limited.
- (6) The development of the international organizations or the countries urges the enterprises to fulfill the corporate social responsibility (CSR).

The international organizations are the United Nations in 1999 and 2004, OECD in 2000, EU in 2004 and from year to year they have pushed the enterprises in the countries to increase CSR (T. Mizuguchi "The movement and future view of the CSR in the foreign countries" *Horitsu Jiho*, vol, no.12, p.27-29)

In Japan the Health, Labor and Welfare Ministry established the society for the study concerning the ideal way of CSR in the labor and the society pronounced an interim report in July, 2004. The Economy and Industry Ministry also a social meeting (a round table conference) concerning the social responsibility (CSR) of the enterprises and the meeting pronounced an interim report in September, 2004.

The above stated descriptions are connected with CSR, but without these CSR, compliance is unable to attain its object.

### **Worker's Status in Japan**

A worker has a status as an employee a seller of his working power and a status as a citizen, shareholder, investor, buyer, consumer or customer. Japan's enterprises took an increasing interests in a worker as a citizen, but were unconcerned with workers as compared with industrial countries. Though Japan's employees worked

frequently overtime and midnight and some of them fell ill or went to death or suicide owing to overwork, they did not much demonstrate the power as their citizens. I desire to state my experience in foreign travel.

Firstly I state one background of a president's compliance in U.S.A. It is the heavy damages including exemplary damages money which is characteristic of U.S.A.

In 1975 I visited one department store in New York and met a personnel divisions head. The head had a important duty to the effect that he taught the president about new concerned laws. The head said the president surely abided by the laws because he or the company had to pay the heavy damages money against violation of the laws.

Japan's court judgment damages money is too low in comparison with U.S.A.

Secondarily in the foreign industrial countries the workers protected their jobs for life, but didn't deprive the other workers of the jobs, though it may be only my impression.

In 1953 I stayed in Montreal, Canada and I received an impression there. At the scene of labor a carpenter prepared for going home leaving filings etc, intact. He answered to the effect that another person A cleared away the things as his job and if the carpenter did the work the carpenter might deprive A of his job. He added that it was a crime.

Still now in Japan some workers obstruct another worker's employment by long service work.

Thirdly also in 1953 I received another impression there in Canada, workers and their wives are buyers. The department store notices that.

In a display room of a department store, the store exhibited a splendid summer house for the store workers. It was useful for the store to increase the purchasing power of the other workers and their wives.

The consciousness of Japan's employers and workers and their wives in those days did not reach there.

Fourthly in 1975, I got a chance to visit DGB (Deutscher Gewerkshaft) and ULA (Union der Leitenden Angestellten) in West Germany.

In 1976 Betriebsverfassungsgesetz was revived and in the companies of employees over 2000 the inspectors of the same number of labor and management should be elected. The one half of the inspectors is the representatives of labor and one of the representative of ULA is included in the employees' representatives. The inspectors society is the supreme institution which decides the managing intention and has the power respecting appointment of executives etc.

If DGB acts in concert with ULA, the companies of employees over 2000 will turn their eyes on citizens, supervisors or workers (S. Matsuoka "supervisor without chair" p.87-89).

In Japan just after the second world war's end, the labor unions which were born within companies deeply participated in management by collective agreements (S. Matsuoka, The right of management and collective Bargain — Labor Union's Management Participation, confined number, Horitsu Ronso, vol.74, number 4.5 p.27, 28, 52, 53).

Especially since the collapse of economic bubble Japan's workers were subject to a employer and generally the labor unions did not strike. The employers were not concerned with workers. Japan's investors were not concerned with workers in comparison with U.S.A and England (Already cited Adachi, p.36).

But owing to the separation because of bankruptcy and discharge and the decline of the lifetime employment system or the seniority rule Japan's worker's feeling changed. Furthermore as the employers on the name of restructure decreased the regular workers and increased the temp workers in place of the regular workers and the ratio of the temp workers to all workers is about 35 to 100, (the Health, Labor and Welfare ministry's research, September, 2003). These give the workers serious feelings because the wages and the other conditions of the temp workers are too low. The temp workers are supposed to increase in the future. Japan's moderate workers stood on their own rights on the strength of law against the

employer's extremely selfish actions. Therefore the employer should abide by the law and the labor law. Rather it is necessary in this situation for the employer to expect the working spirits of the workers under the under the working conditions which were declared by the principles of "life worthy of human being" and "worker and employer on equal basis" in article 1, 2 of the Labor Standards Law.

On the other hand a worker has right as a citizen. But a Japan's labor union was born in a company and an employee was called by the name of company person. Therefore a worker and a labor union were difficult to criticize a company's products as a buyer or a citizen (S. Matsuoka, "On professor Kimoto's Economic Law theory on the point of Labor Law" confined number Horitsu Ronso vol.73 number 2.3 p.22-23). But thereafter they shall take a strong attitude for company to get the trust of citizen. Especially labor union shall develop the outside movement CRS in 2003-2004.

### **The Scandals after the Highest Overtime Pay Case**

Since Nippon Keidanren declared compliance, the violations of laws have continued in the big companies. In the companies which are cited here every company violates two or more laws. At that time the responsible persons are subject to legal action and the presidents successively resign.

**(Background)** Why do they violate the laws? They do for the company to rise profits though they themselves get promotion. It is not permissible for a company to violate the laws to get profits (Hitotsubashi University Professor, K. Tanimoto "The present Situation of Internationalization and Absence of Enterprise Responsibility" Hiroba Union" October, 2004 p.18-19).

Further in companies the dictatorial presidents appeared and acted themselves in disregard of his workers and customer, especially some of them made a subsidiary company which employed cheap workers and undertook dangerous works and the worker's and inhabitant's death and injury appeared as the result of low



wage and dangerous work.

It is not also permissible for a president to violate laws to rise profits and disregard workers, customers and inhabitants.

Those matters shall be examined from the view point of compliance and also CSR. Both Takefuji and Chubu Denryoku violated the Labor Standards Law and afterwards successively another law.

**(Takefuji case — ¥3.5 billion for overtime work)** As stated already (Meiji Law Journal vol.11 p.112) consumer financing firm Takefuji corp. paid ¥3.5 billion for unpaid overtime work (the Japan Times July 29, 2003, Asahi Newspaper July 28, 2003).

Adding some facts here, a president of the corp. Yasuo Takei was just like a dictator. The firm's employees were not unionized, and its president drove them too hard by service overtime work or rule of norm etc. He didn't show understanding toward the customers in quest of profits and expected the employees to use the cruel words toward the customers.

Employees rose to complain. Former employees raised civil suit and requested keep to the Osaka Labor Bureau. The case was amicably settled in this February. From April the firm established the labor special commission by the compliance commission. Total sum of payment in all was ¥3.4500 billion in July (Tokyo Newspaper July 31. 2003).

(Takefuji Wiretapping and Defamation case). According to the Tokyo District Court Takei was sentenced to a suspended three years prison term for wiretapping and defamation of character.

The court also fined Takefuji ¥1 million for violating the Telecommunications Business Law in the wiretapping.

The suspended sentence for Takei might be considered in his resignation of the president and chairman of Takefuji, his old age and his health. But some victims are dissatisfied with the ruling. Although Takei stepped down, his second son is still the representative director of Takefuji, and will the company change? I desire

and expect that the company will prevent similar wrong doings and regain public trust.

**(Chubu Denryoku case — ¥6.52 billion for overtime work)** As stated already (Meiji Law Journal vol.11 p.112–113), its amounts is the largest by a single company.

(Damages Request of the vice President to the chairman) Chubu Denryoku is the huge company. It is afforded promise of stabilized revenue. Its chairman holds a position which manages all financiers himself in a territory.

Vice-president made a compliant to the compliance commission against the chairman. The systems complaining against law in the companies are not a few. So far as the complaint are limited in the inside of the company, the employees generally don't take advantage of the system because they consider their senior official's feelings.

In case of Chubu Electric Powers Co., the chairman bought the old art objects in China at the company's expense ¥0.584 billion. Vice -president alone made in May, 2004 a complaint to "the compliance promotion commission" against the company's unlawful actions. The company requested the chairman about ¥0.457 billion. It allotted the remainder to the president etc. The chairman in July, 2004 resigned. This commission in the company is a rare success instance.

The commission was established under the pretense of Tokyo Denryoku's concealment of nuclear power plant troubles which was found in August, 2002, and elects a lawyer as a member and watches the violation of laws (editorial of Asahi Newspaper, October 1, 2004).

The chairman experienced a president and had an absolute power in the company. His mixing up public and private matters was exorbitant.

What did the labor union against such unlawful action? Though ¥6.52 billion for overtime work was paid to the employees, the service overtime pay becomes extinctive by prescription (article 115 of the Labor Standards Law). The proper check of labor union shall be expected.

## **The large companies and compliance in 2004**

In 2004 noteworthy legal scandals are found in three giant companies' violation of laws. Those companies are Kokudo corp., Mitsubishi Motors corp. and Kansai Electric Power co. Every president of the company is just like tyrant. Every company has violated against laws in succession. Therefore every company shall be introduced historically.

### **Kokudo and Compliance**

**(Tsutsumi kin — the House of Tsutsumi)** Yasujiro Tsutsumi was a president of the House of Representatives. Afterwards, he went into the economic world. He bought and collected lands and shares.

He had several sons. The second son, Seiji had charge of the department etc. The third son, Yoshiaki entered his father's company, Keikaku Kogyo (Now, Kokudo), and became the president in 1964 which his father died.

From the period of his father Yasujiro Kokudo an unlisted firm and among the shares which Kokudo possessed the shares which falsified under the names of individuals were in no small numbers. Yoshiaki succeeded to his father's way.

**(Seibu Railway and Sokaiya)** The president of Kokudo was also the chairman of Seibu Railway. In 2000 Seibu railway sold a residential land which belonged to the Seibu Railway, thorough a subsidiary company to the real property company which engaged a sokaiya as an adviser. The sokaiya died after he was indicted for violation of the commercial law.

The sale price was about ¥0.25 billion. The actual price was ¥0.4 billion and the difference over ¥0.1 billion was regarded as financial benefits. Tokyo national Tax Administration Bureau regarded its difference as Seibu Railway's social expenses for sokaiya and a real Seibu Railway said that it took a appropriate procedure

following Tokyo National Tax Administration Bureau.

In August 2004 for this case Tokyo District court gave ten persons including a managing director of Seibu Railway side and four persons of real property side the verdict of guilty.

In October, 2004 the ministry of Land, Infrastructure and Transport adopted the supervision measures for two companies of Seibu Railway and a subsidiary (Seibu Real Property Selling) on the basis of the law of residential land and building dealing trade. The ministry indicate for both companies to study and train compliance etc, thoroughly.

Reflecting on this sokaiya case Seibu Railway made in this May the ethical norm of the enterprises as follows.

“The company shall get public confidence” “We will abide by the law, ordinance etc, and conduct fairly and sincerely with social and good sense” (Asahi Newspaper October 19, 2004). But afterwards the stated compliance was not practiced.

**(False Information and Insider Trading)** The chairman Yoshiaki Tsutsumi on October 13, 2004 confessed an error in the valuable securities report in the Seibu Railway group and he resigned from all his posts. He already resigned from the chairman of Seibu Railway.

The article 197 of the Securities and Exchange Law prohibits the false record of important affairs. According to article 166, 198 of the the law an insider is forbidden from trading on the knowledge of key internal information before its disclosure. The Securities and Exchange Surveillance commission began an investigation into Kokudo.

The scandals including false information etc. continued over forty years, but were not clarified widely. Kokudo as a parent company governed Seibu Railway, Prince Hotel and Seibu Lions etc. In fact Kokudo was delisted by Tokyo Stock Exchange on October 16, 2004.

**(Commission and Compliance)** On November 22 Seibu Railway group established “Management Reform Committee” consisting of five outside and intellec-

tual persons including the chairman of the committee K. Moroi (Taiheiyo Cement Counselor).

This commission intends to change Kokudo's ruling structure and to realize compliance. The opinion is expected to be pronounced.

### **Seibu group workers — Check framework?**

Ex-chairman of Kokudo, Yoshiaki Tsutsumi was a secret dictator. Hidekazu Yamada has worked at the company's accountant for 27 years and Yuji Chikazawa for 17 years. Their working years are not correct, but they worked for the dictator, Yoshiaki for a long period though they have an objection to it.

In case of Seibu Railway the company was subject to Kokudo. The labor union of Seibu Railway did not strike. The members of the company possessed stocks and the company trained and taught its members the thanks and loyalty to the house of Tsutsumi.

According to father Yasuziro's teaching on the conduct of life, stupid subordinates are better. Wise subordinates may intend a revolt. Yoshiaki practiced his father's teaching (Tokyo Newspaper, November 19, 2004).

In case of Kokudo new supervisors were trained for six months. They were thoroughly taught the way to greet and an angle of bow for Tsutsumi (Tokyo Newspaper, October 21, 2004).

Therefore there were no persons who protested or warned Yoshiaki Tsutsumi against his conducts. A labor union has not been made at Kokudo and nor also at Prince Hotel. The workers and their labor union are desired to have a real ability and check such legal scandals.

### **MMC and Compliance**

The Yokohama Summary court opened on September 1, 2004 the first in a series

of trials on the criminal liability of the scandal — ridden MMC (Mitsubishi Motors Corp.) and its executives as well as former executives of Mitsubishi Fuso Truck & Bus corp., which spun off last year from MMC. The three defendants including former Mitsubishi Fuso chairman Takashi Usami are charged with falsifying reports submitted to authorities on defective wheel hubs that caused a fatal accident in Yokohama.

The eight defendants including MMC president Katsuhiko Kawasoe are first charged with professional negligence in two accidents at Yokohama district court on August 30, 2004.

In one accident, a young mother was killed and her two sons were injured when they were hit by a wheel that came off a large Mitsubishi truck with a faulty wheel hub. (Yokohama case).

The defective clutch caused another accident, when a truck's drive shaft fell off on a highway, disabling the brake. The 33-year-old driver was killed when the vehicle smashed into a roadside structure at an intersection (Yamaguchi case).

The six defendants denied hiding fatal defect and pleaded not guilty except the two employees in an active service who accepted the prosecuting witnesses.

**(MMC's Illegal Acts — Their History)** MMC spun off in 1976 from Mitsubishi Heavy Industry which was Japan's top war industry. MMC conducted frequently illegal acts.

**(Sexual Harassment)** In 1976 in the MMC's subsidiary factory in U.S.A. large sexual harassment problems including over 3000 females arose and EEOC (U.S. Equal Employment Opportunities Commission) instituted a law suit for compensation for damages. Finally in 1998 a reconciliation was concluded and the company paid \$34 million (Fumio Yamazaki "Jurisprudence of Sexual Harassment" p.194).

**(Sokaiya)** In 1997 a dark part of the company was exposed. The Metropolitan Police Office arrested the managing staffs of the company on suspicion of the commercial law because they delivered cash money to Sokaiya and charged the five former executives.

Owing to the Sokaiya case the president of MMC, Y. Kimura resigned and in November, 1997 as its successor the executive director, K. Kawasoe was promoted to the president over the 13 heads of his seniors because the revolution in the company was placed much hope on him.

But he finally in November, 2000 assumed the responsibility for hiding the recalls and resigned his office and in June 2002 was charged with professional negligence.

**(The Background of MMC's illegal acts)** The MMC tops reported to the effect that the accidents had been caused by “poor maintenance and overloading on the of users” and opposed to the recalls. But the company on March 24, 2004 withdrew the usual opinion of “poor maintenance and overloading on the part of users” and acknowledged the defects of hubs and reported recall to the ministry.

On May 6, 2004 Usami and four executives were arrested on suspicion of violation of the Road Trucking Vehicle Law (False Report) and two senior officials were arrested on suspicion of professional negligence resulting in death and injury of Yokohama case of hub. Also on June 10, 2004 former president Kawasoe and five executives and senior officials were arrested on suspicion of a professional negligence resulting in death of Yamaguchi case of clutch. The legal responsibilities of the presidents Usami, Kawasoe and other executives will be decided by the court.

The leader of violation of laws is a president and the executors are its executives because the president was called an emperor in the company and has an absolute power. A president and the executives were indifferent to recall for a long time. In 2000 the company concealed for thirty years the claim information in relation to recall and did not report the fact to the Transport Ministry at that time. The concealment of the claim was found on complaint of the inside. In February, 2001 the Metropolitan Police Office sent the police report relating to the criminal of nine executives including former a deputy president to the prosecutor on suspicion of violation of the Road Trucking Vehicle Law (False report) and four executives including the former president received the summary judgment. After the judgment the company did not take a proper measure and met two accidents with death and

injury.

**(Social Responsibility — Safety and Public Trust)** Why have the president and the executives lacked compliance and avoided the recalls of vehicles? They may have feared that disclosure of defect would damage the brand name of Mitsubishi and lose the trust of the users, and thereto the recall would cost several billion money. But as the company did not recall even after the summary order on compliant of the inside, on the contrary the two accidents with death and injury occurred. The selling amount of vehicles without public trust dropped and the decrease of workers and the factory closing followed.

In order to save the situation the company shall strive to realize the compliance which has been pointed out, and further to erect and practice a new idea and plan in lieu of the brand name Mitsubishi and the absolute and arbitrary decision of a president and his favorite executives without listening to the workers and the customers. The company shall not attach importance to the brand name Mitsubishi but get a social trust and fame in the excellent quality and safety of vehicles. It is the social responsibility of the company and now the only road for the company to survive. What did the labor union? The union shall watch and corporate with the company's revival by the social responsibility.

### **Kansai Electric Power Co., and Compliance**

#### **(Mihama case — Death and Injury)**

According to Kyodo news, four workers were killed and seven onens were injured by superheated steam escaping from a ruptured pipe at the Mihama nuclear power plant in Fukui prefecture in August 9, 2004. The death rose to five after one of the injured died August 25. The dead and injured were all employees of Kiuchi Keisoku, a Kepco's (Kansai Electric Power Co.) subcontractor. The workers had been doing preparation work for regular checks of the reactor.

The plants operators (Kepco) failed to inspect the pipe during 28 years since the



reactor began service in December 1976.

**(Subcontract and Check)** The central government delegates the check standard of the ruptured pipe to Kepco, and Kepco completely delegates its check to Kiuchi Keisoku.

The persons of Japan electric power companies are divided in regular and irregular ones. The former do not attain to 8200 but the latter are over 58000. In Mihama the former's number are 404, but the latter's ones are 2920. The former's persons are regular and full-time employees of Kepco, and they do the desk works. The latter's persons do the manual and dangerous work at Kepco plants, as well as inspection. In case of Mihama the irregular workers were working for Kiuchi Keisoku and the subcontractor was working for Kepco.

Since about the middle of the 1900's every electric power company has begun to repress its cost under the deregulation of the electric power. The frequency of the checks has decreased but shall increase. Further the checks shall take the step to suspend the operations of the running nuclear reactors to check the safety of pipes.

Although there was no radiation leak, Mihama case is Japan's most big nuclear accident. The aging pipe at half of the country's fourteen nuclear power plants may need replacement.

**(Lesson 1 — Surry case)** In 1986, it should be noticed, a similar steam pipe accident occurred at a nuclear plant at Surry, in the U.S state of Virginia, killing four workers. The four deaths and eight injures were due to expose to high-temperature steam by the break of a tube.

The ministry of International Trade and Industry in those days made in 1987 the report "In Japan such accidents did not occur"

In the case of Kepco (Kansai Electric Power Co.), Secondary — loop equipment was left to voluntary inspection by individual operators.

**(Lesson 2 — Mihama case)** The government and the nuclear and Industrial Safety Agency shall inspect the company and be responsible for it.

**(Lesson 3 — Enterprises)** According to the inhabitants of Mihama recently the period of the regular inspection has been decreased to a month and half from about three months heretofore. As state already, Kepco did not suspend the operators of the running nuclear reactors to check the safety pipe. It was for Kepco to decrease cost and to raise profits.

The concerns of the employees of Kepco, Kiuchi Keisoku and the inhabitants of Mihama shall be removed. The frequency and period of the regular inspection shall be examined for safety and Kepco shall suspend the operations of the running nuclear reactors to check the safety of pipes.

**(Lesson 4 — President and Chairman)** As stated already, the pipe had not been replaced in 28 years, and it had worn down to thickness of only 0.6 mm (The Sunday Times, Septembers 11, 2004). The accident may be a criminal case and increases the bad faith for nuclear power. The responsibility is very heavy. The responsibility of the Kepco's president Yosaku, Fuji or also the Kepco's chairman Kiku, Akiyama has been the most important.

### **The Public Benefit Reporter Protection Law**

**(Birth)** Many legal scandals in 2002-2004 were exposed mostly by whistleblowers at the working place to the administrative office or to newspaper. The protection of the whistle — blowers was already stipulated in the Labor Standards Law or the Atomic Energy Law (Meiji Law Journal vol.10 p.79–81, vol.11 p.101–102).

The Public Benefit Reporter Protection Law was enacted on June 18, 2004 and is scheduled to be enforced in April, 2006. According to the law the reporter shall not be discharged nor discriminated by reason of the report (article 3, 7). But the sphere of the law is very limited and the conditions of protection are too severe. Therefore a severe criticism appears, "The law is not protection, but regulation."

**(The Publi Benefit Reporter)** The reporter (whistle — blower) who is pro-

tected in the law is limited to a worker, dispatch worker and public servant (number 1, 2 of article 2).

**(The Report Subject Fact)** The report subject fact which is protected in the law is in the following laws the fact of the criminal act or the fact of violation of the disposal under the provisions of the previous law in case that the violation is the reason of the disposal concerned in case of the fact of the previous number.

① The Criminal Law ② The Food Sanitation Law ③ The Securities Exchange Law ④ The JAS Law ⑤ The Atmosphere Pollution Law ⑥ The Law Concerned with the Dispose of disused things and Cleaning ⑦ The Law concerned with the protection of the individual information ⑧ The Laws which are provided by the government ordinances as the laws concerned with the protection of the people's life, body, property and other interests

The public office election law and political fund regulation law are excepted from the law.

**(Three Protection Organs and Condition)** 1 The public benefit report to the place of employment in case that the reporter considers that the report subject facts occur or they just are about to occur.

2 The public benefit report to the administrative organ which has the power to deal with or advise in case that the report subject facts occur or they just are about to occur with appropriate reasons worthy of trusting.

3 The public benefit report to the outside, newspaper or television in case that the report subject facts occur or they just are about to occur with appropriate reasons worthy of trusting and there is a case applicable to the following one.

The public benefit report to the persons in case that the report of the report subject facts is necessary to prevent occurrence or magnifying of harms.

① In case that there are appropriate reasons worthy of trusting that the reporter is discharged and discriminated if he reports to the place of employment or the administrative organ (before stated 1, 2).

② In case that in the report to the place of employment there are appropriate

reasons worthy of trusting that the testimony concerning the competent report subject facts is in danger of suppression, forgery and alteration.

- ③ In case that the reporter was requested by the place of employment that the reporter does not report to the place of employment or to the administrative organ without the proper reasons.
- ④ In case that concerning the competent report subject facts even after twenty days from the report date there is not the notion to the effect that the place of Employment etc. performs the investigation or it does not perform the investigation without proper reasons.
- ⑤ In case that for the individual's life or body harms occur or there are those pressing damages with appropriate reasons worthy of trusting.

**(Some requests for the the Public Benefits Reporter Protection Law)**

This law is limited to the stated laws. To receive the protection of the administrative organ, further more to receive the protection of the outside, newspaper or television, the severe conditions are imposed.

There are no consideration for speedy and fair protection.

This law may not protect the cases which were protected by the court. According to my private opinion, the court shall in future protect the cases which are not protected by this law because the text of the law is in some cases difficult and vague and the court shall interpret on the point of view different from administration.

The administrative relief shall be more easy and speedy than the court. This law shall be operated and revised from this point of view.

**Dawn Light Agreement — Noticeable Compliance**

I should like to take up the Dawn Light Agreement between Hitachi Butsuryu Labor union and Hitachi Butsuryu Co. in June 22, 2004, because the agreement is the most noticeable on the point of view of its background.

## **Its Background**

**(The violations of the law, especially the collective Agreement)** In the company from a long age the breach of the labor law, especially the collective agreement was by the union pointed out and each time the company expressed repeatedly its apology for its breach. A shocking case occurred.

**(Urawa Local Court Decision)** The business office head of this transport company was informed by a client removal customer that a purse was lost while at removal work and the head without S's consent searched S's person and examined S's things at work. Lately the client reported to the head the fact that the purse appeared.

S brought a suit against the company. The labor union supported S's suit. Urawa Local Court gave the case for S probably according to the Supreme Court decision (November 22, 1991) The decision declared the guaranty of the human right, the trust for colleague, the privacy or the person's liberty and ¥300,000 consolation money. The company did not appeal against the decision.

**(The Central Labor Relations Commission's Reconciliatory Agreement)** On the other hand the labor union proposed to bargain collectively in order to prevent the relapse. As the company refused it, the labor union complained to the labor Relations Commission.

The Central Labor Relations Commission recommended a reconciliation and the reconciliatory agreement dated June 20, 1994 between the union and the company was concluded. The contents are divided in three points.

Firstly, the president himself apologizes to S and expresses his regret to the labor union. (Article 1)

Secondarily, the company thoroughly educates the persons holding positions of supervision or management to prevent the relapse. (Article 2)

Thirdly, the company and the labor union regard the solution of the case as the

dawn light for the new relation between the union and the company, abandon all each opposite feeling and cooperate for the mutual reliance relation which was based on the aim and purpose of the collective agreement.

The large expectances of the Urawa decision and the Central Labor Relations Commission's reconciliatory' agreement were betrayed by the company. The company neglected the decision and the agreement. The labor union pointed out and protested the points. The company apologized.

Concerning the suicide of Adachi, union's chief secretary, the labor union protested against the company and its leaders' illegal and unfair labor practices. The company apologized.

### **The new Dawn Light Agreement**

**(The difference from the old Dawn Light Agreement)** The new Dawn Light Agreement was concluded after "point out" and "apologize" were repeated frequently. It was new and different from the reconciliatory agreement of June 20, 1994 in the four points.

Firstly, it was concluded autonomously without the commission's aid.

Secondarily, the company paid ¥10 million to the labor union as the settlement of dispute.

Thirdly, the two persons of the company's supervisors express themselves their apologies.

Fourthly, as the characteristics of the content the company's feeling of apology and compliance are outstanding.

**(The content)** The union and the company conclude on June 22, 2004 the agreement in view of the fundamental spirit of the reconciliatory agreement dated June 20, 1994 and for the new development of the union and management relation as follows.

Firstly, the union pointed out strongly saying that the company's action was not

only the defamation for the union, but also the unfair labor practice.

The company pledges to have respect for the union and individual human rights.

Secondarily, the union pointed out strongly saying that the company's action was not necessarily sufficient in view of the fundamental spirit of the reconciliatory agreement and the problem of the collective agreement produced inconsistency in the reliance relation of labor and management.

The company expresses its apology for this.

Thirdly, the company hereafter matches the following practices and enforces them in order to prevent the relapse.

- ① The company respects “the equality between labor and management” which is declared in the Labor Standards Law and the Trade Union Law and regards it as a norm of action.
- ② The company “abides by all laws, International rules and their spirits, and acts thoroughly with social and good sence” in the “corporate activities charter” of Japan Business Federation (Nippon Keidanren) which was revised dated October 15, 2002, has the confidence of the customers, and abide by the trade union law, and does not decidedly act illegality, unfair labor practice for union.
- ③ The company strives for thorough understanding of the collective agreement and this Dawn Light Agreement in case of education of the persons holding positions of supervision or management pertaining to labor and management relation, and deals fairly with a person against the stated agreement. The company in this way strives to prevent the relapse.

Fourthly, the company and the union by the late solution of its problem recognize again the fundamental spirit of the reconciliatory agreement dated June 20, 1994, and under the mutual reliance relation according to the aim and purpose of the collective agreement promise to deal with various subjects in cooperation with each other in order to strive to heighten the employees' working wills and hopes and at its base to raise productivity.